IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 342 OF 2003

Rajesh S/o Vithalrao Patil
Aged about 25 years,
R/o Siddharth Nagar, Nagpur ... Appellant

// VERSUS //

State of Maharashtra through Anti Corruption Bureau, Nagpur ... Respondent

Shri J.M.Gandhi, Advocate for appellant
Shri S.D.Sirpurkar, APP for the State / Respondent.

CORAM : ANIL S. KILOR, J.
DATED : 18th OCTOBER, 2022.

ORAL JUDGMENT :

This appeal is directed against the judgment and order dated 9th May, 2003 passed by the Special Court constituted under the Prevention of Corruption Act, 1988 Nagpur in Special Case No. 7/1993, convicting the appellant/accused for the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (in short referred as "the Act of 1988").

2. It is the case of the prosecution that the appellant at the relevant time was working as Revenue Assistant, Tax Department, Nagpur Municipal Corporation, Nagpur and the complainant Shri Bhojraj Gokul Malode as Police Constable with Traffic Department,

Nagpur who lodged a complaint on 2nd June, 1992 that, for reduction of Tax amount of his house constructed at Sugat Nagar, Nagpur the appellant demanded the sum of Rs.800/- towards the bribe.

3. He further alleged that in the month of January, 1992, when the appellant had been to his house for measurement, he met him and enquired about the estimated tax amount and the appellant asked him to meet at his residence on next day and on the next day, the complainant was informed that the annual tax of his house would be of Rs.800/-. When the complainant requested to reduce the same, amount of Rs.800/- was said to be required.

4. It is further alleged that the appellant has accepted Rs.100/- towards part payment and called the complainant after 2 or 3 days. After 2-3 days when the complainant went to his house, the appellant informed him that the tax amount was reduced to Rs.563.70 per annum and demanded remaining amount of Rs.700/- and accepted Rs.200/- towards second part payment. On 02.06.1992, when the complainant had been to appellant's house again, he demanded the balance amount of Rs.500/- and the tax amount of Rs.563.70/-, in total Rs.1063.70/-.

5. That, on 02.06.1992, the appellant demanded and accepted the tax amount of Rs.563.70 and Rs.500/- for himself and thereby committed the offence under the provisions of Act of 1988.

6. I have heard Shri J.M.Gandhi, learned counsel for the appellant and Shri S.D.Sirpurkar, learned Additional Public Prosecutor for the State.

7. Shri Gandhi, learned counsel for the appellant submits that demand is a *sine qua non* to constitute the offence under the Act of 1988. It is submitted that the prosecution has failed to establish the demand and acceptance of illegal gratification by the appellant.

8. He submits that mere acceptance of amount and recovery of tainted amount are not sufficient to hold that there was a demand and acceptance of illegal gratification but cogent and cognate evidence is required to establish it. It is submitted that in the case at hand, the trial court has given undue weightage to the recovery of the tainted amount from the appellant to arrive at a conclusion that the demand and acceptance of bribe is proved.

9. Shri Gandhi, learned counsel for the appellant further argues that no independent witness was examined to corroborate the demand and acceptance of bribe by the applicant. It is submitted that even second panch witness who took out the currency note from the pocket of the accused was not examined. In support of his contention, he has placed reliance of *Shivchalappa Gurumortyappa Loni Vs. The State of Maharashtra*[1] *Ram Prakash Arora Vs. The State of Punjab*[2] *and Ashok Kumar Bhagchand Wardhani Vs. State of Maharashtra*[3].

1 1994(2) Bom.C.R.268
2 AIR 1973 SC 498
3 2003 ALL MR (Cri) 88

10. He further points out that all the tainted currency notes allegedly recovered from the appellant were not sent to Chemical Analysis but out of it only one note of Rs.100/- was sent and therefore, it creates doubt about the recovery of tainted currency notes from the appellant.

11. He further argues that sanction goes to the root of the jurisdiction and in case of invalid sanction the trial court does not get jurisdiction to proceed with the trial. It is submitted that for want of authority to grant sanction by the Commissioner, the sanction vitiates. In support of his contention, he has placed reliance on the judgments in the cases of *P.L.Tatwal Vs. State of Madhya Pradesh*[4], *M.P.State Vs. Pradeep Kumar Gupta*[5],*Pradeep Purshottam Pimperkhede Vs. The State of Maharashtra*[6], *Maruti Subrao Shinde Vs. State of Maharashtra*[7], *Mohd Iqbal Vs. State of Andhra Pradesh*[8] *CBI Vs. Ashok Kumar Aggarwal*[9] *Bhagwan Mahadeo Sathe Vs. State and another*[10]

12. Shri Gandhi, learned counsel for the appellant further argues that in absence of any evidence to prove the demand and acceptance of bribe, the conviction recorded by the trial Court is illegal, bad in law and not sustainable in the eyes of law. Accordingly, he prays for quashing and setting aside the impugned judgment and order.

4 2014 SC AIR 2369
5 AIR 2011 SC 2334
6 2014 ALL MR (Cri) 3064
7 2011 ALL MR (Cri) 1968
8 AIR 1979 SC 677
9 AIR 2014 SC 827
10 2011 ALL MR (Cri) 1221

13. On the other hand, Shri Sirpurkar, learned Additional Public Prosecutor supports the impugned judgment and order dated 9th May, 2003 and submits that the learned trial Court after scrutinizing and examining oral as well as documentary evidence and after recording the reasons for conviction, convicted the appellant and therefore no legal infirmity or illegality has been committed by the trial Court.

14. Learned Additional Public Prosecutor further submits that there is sufficient evidence to establish and prove the demand and acceptance of illegal gratification by the appellant. It is submitted that the appellant has not disputing the recovery of tainted amount from him which is sufficient to hold against the appellant.

15. It is further argued that as the prosecution has successfully brought sufficient evidence to corroborate the prosecution case, non-examination of any independent witness cannot be the ground to acquit the accused.

16. Learned Additional Public Prosecutor further submits that the sanction granted by the Municipal Commissioner is valid and it was granted in compliance with the law.

17. In the backdrop of above submissions made by both the parties, I have perused the record and proceedings and the impugned judgment and order with the able assistance of learned counsel for the appellant and learned Additional Public Prosecutor.

18. The Hon'ble Supreme Court of India in catena of judgments has held that the demand of illegal gratification is *sine qua non* for to constitute an offence under the Prevention of Corruption Act, 1988. As an illustration reference may be made to the following decisions of the Hon'ble Supreme Court of India.

19. In the case of *State of Punjab v/s Madan Mohan Lal Verma (supra)* has held thus:

> *"11. The law on the issue is well settled that 'demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person."*

20. In the case of V.Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga[11], the Hon'ble Supreme Court of India has held thus:

> *20. While dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it illegal gratification and that the prosecution has a further duty to prove that what was paid was an illegal gratification, reference can be made to following observation in Mukut Bihari and Anr. v. State of Rajasthan (2012) 11 SCC 642, wherein it was held as under:-*
>
> > *11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused, when the substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as bribe. Mere receipt of amount by the accused is not sufficient to fasten the guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification, but the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness and in a proper case the court may look for*

11 2016(12) SCC 150

independent corroboration before convicting the accused person."

21. In the case of P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and another[12] the Hon'ble Supreme Court of India has held thus:

20. This Court in A. Subair vs. State of Kerala (2009)6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

21. In State of Kerala and another vs. C.P. Rao (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance

12 2015(10) SCC 152

of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder.

22. In the teeth of above referred well settled law, I will first address the contention regarding proof of demand of illegal gratification. For this purpose, the evidence of P.W-1, complainant and P.W-2, the panch witness no.1, are relevant.

23. In the oral testimony of P.W-1, he has deposed that on 27th February, 1989 he and his friend jointly purchased one plot from Sushila Co-operative Housing Society and thereafter in the year 1991 he purchased half share from his friend, co-owner. He further deposed that in the year 1991 he made construction of a house on the plot, consisting five rooms and one varandha. On 25th November, 1991 he made an application to tax department of NMC to allow him to remit the tax.

24. PW-1 further states that in January, 1992 when he visited his new house, he saw that accused Rajesh Patil was taking measurement. At

that time one Mr Dongre informed PW-1 the name of accused as Rajesh Patil. After the work of measurement was completed, PW-1 questioned Rajesh Patil what should be the tax amount. Then Rajesh Patil asked PW-1 to come to his house. On next day PW-1 went to the house of accused and thereupon the accused informed PW-1 that atleast Rs.800/- p.a. will be the tax. PW-1 further states that he asked the accused whether the amount of the tax can be lowered or reduced down. On that the accused states to him that for that purpose PW-1 will have to pay Rs.800/- as extra amount.

25. He further states that he paid Rs.100/- to accused Rajesh Patil and thereafter the accused asked him to come after two or three days. Accordingly, after two or three days, PW-1 went to the house of Rajesh Patil, thereupon the accused shown him the assessment of house tax of PW-1, as Rs.563.70 pa. He further states that accused told him he will have to pay the tax from the year 1989. Thereafter, he demanded the remaining amount of Rs.700/-. Thereupon, PW-1 said to the accused that on 22nd February, 1993 there was a vastu puja of his house and therefore, he had Rs.200/- which he gave to the accused and the accused accepted it.

26. PW-1 further deposed that on 2nd June, 1992 he went to the house of Rajesh Patil and told him that PW-1 will remit the tax today on that Rajesh Patil asked about the amount of Rs.563.70 plus the extra amount of Rs.500/-, total Rs.1063.70 ps. Then PW-1 said to Rajesh Patil that today he will receive the salary and where he should meet him.

Thereupon, Rajesh Patil said to PW-1 that till 1.30 pm he is at home, after that PW-1 should come to the office of NMC, he will be there. PW-1 further states that accused said to him as the amount of gratification of Rs.500/- was not paid, he did not forward the tax notice to PW-1. He states that as he was not willing to pay Rs.500/- he went to the office of ACB and lodged the complaint.

27. Then PW-1 narrates about the preparation of pre-trap formalities and procedure and then he states about the demand during the trap.

28. PW-1 states that during the trap, he along with Panch no.1 went near the table of accused. On seeing PW-1, the accused took out one register. From that register accused took out one chit. Some writing in red ink was there. The accused took out the calculator and made some calculation on that chit. Thereafter the accused prepare one tax receipt in favour of PW-1 by using carbon. The accused then affixed revenue stamp on the receipt which he had prepared in the name of PW-1. Then, detached the original receipt from receipt book and returned the carbon copy of receipt in receipt book. The said receipt was for the tax amount of Rs.563.70.

29. Then PW-1 took out the tax amount of Rs.565 and gave it to the accused. The accused counted the amount and kept in the chest pocket of his manila. Thereafter Rajesh Patil asked PW-1 whether as per the agreement he brought Rs.500/-. Thereupon, PW-1 said yes. Then

accused tendered PW-1 tax receipt and one demand notice of tax which was already prepared. Thereafter PW-1 said to Rajesh Patil that the amount of Rs.500/- is too much, on that the accused said that the figure of Rs.500/- cannot be reduced and P.W-1 will have to pay Rs.500/- to him. Then PW-1 took out the bribe amount of Rs.500/- from his right hand from the chest pocket of his manila and tendered that amount to accused. The accused accepted that amount by his right hand. The accused counted that amount with his both the hands and after counting Rs.500/-, the accused kept that amount of Rs.500/- by his right hand in the chest pocket of his shift i.e. left side pocket. Then PW-1 came out and gave agreed signal to the trap party. Thereupon, the trap party came and they caught the accused.

30. Thus, this is the version of PW-1 in his chief about the demand and acceptance of bribe.

31. PW-1 in his cross-examination states that he got knowledge with the tax assessed was Rs.563.70 at the time when accused called him for second time at his house. He further states that he got knowledged about the same prior to trap probably in last week of January or first week of February.

32. Thus, PW-1 complainant in clear terms accepted the fact that even prior to lying of trap, he got knowledge about the tax assessment of Rs.563/-. It has also come in the oral evidence of PW-1 that he paid

Rs.500/- towards bribe after the amount of tax was paid and receipt was prepared towards tax amount paid by P.W.1.

33. The above referred facts shows that firstly before the trap the tax was assessed and even before payment of alleged amount of bribe, the tax amount was paid by the complainant and receipt was prepared by the accused. Thus, no work of assessment of tax was subsisting before alleged amount of bribe paid.

34. In the light of this oral testimony of PW-1, I will now examine the oral testimony of PW-2, the shadow witness. In the chief PW-2 has stated that the accused questioned PW-1 whether he brought extra amount of Rs.500/-. PW-1 said yes sir, he brought that amount. PW-2 then made gesture and actual demonstration given to the court, how the amount was taken out from the chest pocket and also how the accused made demand.

35. By the demonstration given by PW-2 by gesture to show how the demand was made by the accused, it appears that verbally no demand was made by the accused. Whereas, in the evidence of PW-1 there is nothing come on record about the said demand by gestures. Thus, this contradiction in the evidence of P.W-1 and P.W-2 is material and creates doubt about prosecution story of demand.

36. Furthermore, as regards tainted notes, in the chief P.W-1 states that the bribe amount of Rs.500/- was containing currency notes of denomination of Rs.100/-. He further states that after trap when the

amount was recovered from the accused, the solution was sprinkled on all currency notes. Thereupon purple colour dots appeared and then all those five currency notes were kept in one envelope and that envelope was closed and sealed and signatures of both the panch witnesses were taken. However, at the same time, if the Chemical Analysis report is seen. It appears that all the five notes which were recovered as bribe amount were not sent for chemical analysis. The report Exh.41 says that Exh.no.3 is one currency note of Rs.100/- and not five notes of denomination of Rs.100/- which were recovered from the accused during the trap.

37. Thus, it is clear that the prosecution has failed to establish that the notes which were recovered from the accused were the notes to which phenolphthalein powder was applied and during the trap it was given to the accused, to prove acceptance of the bribe amount. Hence, from the above evidence the demand and acceptance of bribe amount are not proved.

38. Further, there is a time gap of seven days in between the trap and the sample Exhs. 1 to 5 were sent to Regional Forensics Science Laboratory for chemical analysis. Muddemal register is not produced to show that the entries were taken in the said register. Further more, evidence is produced to show that who had taken Exhs. 1 to 5 to the laboratory. There is also no evidence to show that proper care was taken during these seven days to avoid any possibility of tampering of the samples. Thus, on this count it is not safe to rely upon the chemical analysis report.

39. Moreover, no independent witness has been examined by the prosecution though in chief of PW-1 it has come that at the time of trap, two employees of corporation were there on the spot in the room where the trap was conducted and the accused was caught hold.

40. Similarly, panch no.2 was not examined who was taken out the amount from the chest pocket of Rajesh Patil and kept that amount on the table.

41. In the case of *Shivchalappa Gurumortyappa Loni Vs. The State of Maharashtra* (supra), the Principal Bench of this High Court has held thus:

> *8...*
> *.......................... In important cases, I have failed to see the wisdom on the part of the prosecution in examining only one of the two panchas. In the present case, Shri Hudlikar pointed out that the examination of the second panch was absolutely essential because he was not a formal witness but strangely enough, he is the person who is supposed to have taken the currency notes out of the pocket of the appellant-accused. If he had been examined, he would have certainly lent support to independent prosecution evidence. The non-examination of the second panch, Nikkawar, has only weakened the prosecution case further. In these circumstances, the view expressed by me earlier that it does not pass the test of credibility only stands re-inforced."*

42. Thus, non-examination of panch no.2 has weakened the prosecution case further.

43. As the prosecution failed to establish foundational facts, the presumption will not operate against the accused.

44. After going through the evidence and record, particularly the oral testimony of the Sanctioning Authority, P.W-6 which sufficiently shows that before granting sanction, the Sanctioning Authority has considered and appreciated the material provided to him for grant of sanction. In that view of the matter, I do not find any merit in the contention of the learned counsel for the appellant that the sanction is invalid. In the circumstances, judgments cited by the learned counsel for the appellant in this regard are of no help to the appellant.

45. In the light of the above referred discussion and the fact that the prosecution has failed to establish the demand and acceptance of the bribe amount by the appellant, no offence would attract in this case. Accordingly, the conviction recorded by the learned trial Court is illegal and bad in law. Hence, I have no hesitation to hold that the impugned judgment and order dated 9th May, 2003 passed by Special Court constituted under Prevention of Corruption Act, Nagpur in Special Case No. 7 of 1993 convicting the appellant is illegal and liable to be quashed and set aside. Accordingly, I pass the following order.

i. The criminal appeal is allowed;

ii. The judgment and order dated 9th May, 2003 passed by Special Court constituted under Prevention of Corruption Act, Nagpur in Special Case No. 7 of 1993, is hereby quashed and set aside;

iii. The appellant is acquitted of the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988;

iv. His Bail Bonds shall stand cancelled;

v. The Muddemal Property be dealt with as per order of the learned Special Judge.

[ANIL S. KILOR, J.]

SACHINDANAND K NAIR

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